

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Justin Morris,

Plaintiff,

Case No. 2:19-cv-1339

-v.

Judge Sarah D. Morrison

Chief Magistrate Judge Elizabeth P. Deavers

Michael Shaw, et al.,

Defendants.

OPINION AND ORDER

This matter is before the Court on Defendants’ Motion to Decline to Exercise Supplemental Jurisdiction. (ECF No. 27.) Plaintiff has not filed a response, and the time to do so has since passed. This matter is now ripe for consideration.

I. BACKGROUND

On April 10, 2019, Plaintiff Justin Morris filed a complaint against Defendants Michael Shaw, Ohio Mutual Insurance Group, and the Centers for Medicare and Medicaid Services (“CMS”). (ECF No. 1.) The Complaint alleges that Mr. Shaw negligently caused a car accident involving Mr. Morris. (*Id.*) The Complaint alleges that this Court has jurisdiction because “Medicare’s claim arises under the Medicare Act, a federal claim” and because, pursuant to 28 U.S.C. § 1442, CMS is an agency of the United States. (*Id.* ¶ 9.)

On July 30, 2019, the Court dismissed Mr. Morris’s claim against CMS for failure to prosecute. (ECF No. 26.) The remaining defendants have filed a motion requesting that this Court decline to exercise supplemental jurisdiction. Because an exercise of supplemental jurisdiction requires the Court to have had subject matter jurisdiction in the first place, *see* 28

U.S.C. § 1367, this Court must consider whether such jurisdiction ever existed. As a result, this Court examines whether it had jurisdiction at the time this action was initially filed, when CMS was a defendant.

II. SUBJECT MATTER JURISDICTION

“[F]ederal courts have a duty to consider their subject matter jurisdiction in regard to every case and may raise the issue *sua sponte*.” *Answers in Genesis of Ky., Inc. v. Creation Ministries Int’l, Ltd.*, 556 F.3d 459, 465 (6th Cir. 2009).

A. Jurisdiction under § 1331

Mr. Morris does not clearly assert federal question jurisdiction under 28 U.S.C. § 1331. However, he does allege that CMS has a claim “aris[ing] under” federal law. (ECF No. 1, ¶ 9.) The Court construes this as an attempt to invoke this Court’s federal question jurisdiction (i.e., “arising under” jurisdiction) pursuant to Section 1331.

“[W]hen a plaintiff’s complaint raises garden-variety tort claims, ‘the presence of a claimed violation of [a federal] statute as an element of a state cause of action is insufficiently “substantial” to confer federal-question jurisdiction.’” *Mays v. City of Flint*, 871 F.3d 437, 449 (6th Cir. 2017) (alteration in original) (quoting *Merrell Dow Pharm. Inc. v. Thompson*, 478 U.S. 804, 814 (1986)). Mr. Morris raises a garden-variety tort claim—a negligence claim—involving a collateral federal issue, that Medicare has paid some of his medical bills. It is indisputable that Mr. Morris has not raised a federal cause of action. At best, Mr. Morris’s invocation of Medicare would have been relevant to any defense CMS might have brought. This is insufficient for federal jurisdiction. *Merrell Dow*, 478 U.S. at 808.

B. Jurisdiction under § 1442

Mr. Morris more acutely invokes 28 U.S.C. § 1442 as a basis for jurisdiction. (ECF No. 1, ¶ 9.) Pursuant to Section 1442(a)(1), a federal agency sued in state court has the right to remove the action to federal court. However, this is a removal statute, not a statute governing original jurisdiction. *See Wood v. Crane Co.*, 764 F.3d 316, 324 (4th Cir. 2014) (“[Section 1442(a)] does not enlarge the original jurisdiction of the district courts.” (internal quotation marks omitted)). “Section 1442(a) . . . cannot independently support Art. III ‘arising under’ jurisdiction.” *Mesa v. California*, 489 U.S. 121, 136 (1989). As a result, Mr. Morris cannot rely on this statute as a basis for federal jurisdiction either.

III. CONCLUSION

For the reasons set forth above, the Court finds that it lacks subject matter jurisdiction in this action. Accordingly, the case is **DISMISSED** without prejudice for lack of subject matter jurisdiction.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE